

## Germany

### DUTIES, RIGHTS, PRIVILEGES, AND IMMUNITIES OF CONSULAR OFFICERS; TRADE-MARKS

*Convention signed at Berlin December 11, 1871; protocol signed at Berlin April 29, 1872*

*Senate advice and consent to ratification of convention January 18, 1872, and to execution of protocol April 24, 1872*<sup>1</sup>

*Ratified by the President of the United States January 26, 1872*

*Ratified by Germany April 24, 1872*

*Ratifications exchanged at Berlin April 29, 1872*

*Entered into force April 29, 1872*

*Articles XIII and XIV terminated July 1, 1916*<sup>2</sup>

*Proclaimed by the President of the United States June 1, 1872*

*Not revived after World War I*<sup>3</sup>

17 Stat. 921; Treaty Series 99

#### CONVENTION

The President of the United States of America and His Majesty the Emperor of Germany, king of Prussia, in the name of the German Empire, led by the wish to define the rights, privileges, immunities and duties of the respective Consular Agents have agreed upon the conclusion of a Consular

<sup>1</sup> The Senate resolution stated “. . . the Minister of the United States at Berlin may execute with the representative of the German Government with whom he may effect the exchange of ratifications . . . a protocol, construing the word ‘property’ in articles three and nine of said Convention as meaning and intending real estate. . . .” See text of protocol, p. 128.

<sup>2</sup> Pursuant to notice given by the United States in accordance with Public Law No. 302, Mar. 4, 1915 (38 Stat. 1164).

<sup>3</sup> See art. 289 of Treaty of Versailles (*ante*, vol. 2, p. 173), the benefits of which were secured to the United States by the treaty restoring friendly relations dated Aug. 25, 1921 (TS 658, *post*, p. 145).

Convention and for that purpose have appointed their Plenipotentiaries namely:

The President of the United States of America: George Bancroft, Envoy Extraordinary and Minister Plenipotentiary from the said States near His Majesty the Emperor of Germany, His Majesty the Emperor of Germany, King of Prussia, Bernard König, His Privy Councillor of Legation, who have agreed to and signed the following articles:

ART: I

Each of the Contracting parties agrees to receive from the other Consuls general, Consuls, Vice-Consuls and Consular-Agents, in all its ports, cities and places, except those, where it may not be convenient to recognize such officers. This reservation, however, shall not apply to one of the Contracting Parties without also applying to every other power.

ART: II

The Consuls general, Consuls, Vice-Consuls or Consular-Agents shall be reciprocally received and recognized, on the presentation of their commissions, in the forms established in their respective countries. The necessary exequatur for the exercise of their functions shall be furnished to them free of charge, and on the exhibition of this instrument, they shall be admitted at once, and without difficulty, by the territorial authorities, federal, State, or communal, judicial, or executive, of the ports, cities, and places of their residence and district, to the enjoyment of the prerogatives reciprocally granted. The government that furnishes the exequatur reserves the right to withdraw the same on a statement of the reasons for which it has thought proper to do so.

ART: III

The respective Consuls general, Consuls, Vice-Consuls, or Consular-Agents, as well as their chancellors and secretaries, shall enjoy in the two countries all privileges, exemptions and immunities which have been granted or may in future be granted to the agents of the same rank of the most favored nation. Consular officers not being citizens of the country where they are accredited, shall enjoy, in the country of their residence, personal immunity from arrest or imprisonment except in the case of crimes, exemption from military billetings and contributions, from military service of every sort, and other public duties, and from all direct or personal or sumptuary taxes, duties and contributions, whether federal, State, or municipal. If however the said consular officers are or become owners of property <sup>4</sup> in the country in which they reside, or engage in commerce, they shall be subject to the same taxes and imposts, and to the same jurisdiction, as citizens of the country, property-

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<sup>4</sup> See protocol, p. 128.

holders, or merchants. But under no circumstances shall their official income be subject to any tax. Consular officers who engage in commerce shall not plead their consular privileges to avoid their commercial liabilities. Consular officers of either character shall not in any event be interfered with in the exercise of their official functions, further than is indispensable for the administration of the laws of the country.

#### ART: IV

Consuls general, Consuls, Vice-Consuls, and Consular-Agents may place over the outer door of their offices, or of their dwellings, the arms of their nation with the proper inscription indicative of the office. And they may also hoist the flag of their country on their consular edifice except in places where a legation of their country is established.

They may also hoist their flag on board any vessel employed by them in port for the discharge of their duty.

#### ART: V

The consular archives shall be at all times inviolable, and under no pretence whatever shall the local authorities be allowed to examine or seize the papers forming part of them. When, however, a consular officer is engaged in other business, the papers relating to the Consulate shall be kept in a separate enclosure.

The offices and dwellings of Consules missi who are not citizens of the country of their residence shall be at all times inviolable. The local authorities shall not except in the case of the pursuit for crimes under any pretext, invade them. In no case shall they examine or seize the papers there deposited. In no event shall those offices or dwellings be used as places of asylum.

#### ART: VI

In the event of the death, prevention or absence of Consuls general, Consuls, Vice-Consuls, and Consular-Agents, their chancellors or secretaries, whose official character may have previously been made known to the respective authorities in Germany or in the United States, may temporarily exercise their functions, and while thus acting they shall enjoy all the rights, prerogatives, and immunities granted by this convention to the incumbents.

#### ART: VII

Consuls general and Consuls may, with the approbation of their respective governments, appoint Vice-Consuls and Consular-Agents in the cities, ports and places within their consular jurisdiction. These officers may be citizens of Germany, of the United States, or any other country. They shall be fur-

nished with a commission by the Consul who appoints them and under whose orders they are to act, or by the government of the country which he represents. They shall enjoy the privileges stipulated for consular officers in this convention, subject to the exceptions specified in article 3.

#### ART: VIII

Consuls general, Consuls, Vice-Consuls, and Consular-Agents shall have the right to apply to the authorities of the respective countries, whether federal or local, judicial or executive within the extent of their consular district, for the redress of any infraction of the treaties and conventions existing between the two countries or of international law; to ask information of said authorities, and to address said authorities to the end of protecting the rights and interests of their countrymen, especially in cases of the absence of the latter; in which cases such Consuls etc. shall be presumed to be their legal representatives. If due notice should not be taken of such application, the consular officers aforesaid, in the absence of a diplomatic agent of their country, may apply directly to the government of the country where they reside.

#### ART: IX <sup>5</sup>

Consuls general, Consuls, Vice-Consuls or Consular Agents of the two countries or their chancellors shall have the right conformably to the laws and regulations of their country

1, to take at their office or dwelling, at the residence of the parties, or on board of vessels of their own nation, the depositions of the captains and crews, of passengers on board of them, of merchants, or any other citizens of their own country;

2, to receive and verify unilateral acts, wills and bequests of their countrymen, and any and all acts of agreement entered upon between citizens of their own country, and between such citizens and the citizens or other inhabitants of the country where they reside; and also all contracts between the latter, provided they relate to property situated or to business to be transacted in the territory of the nation by which the said Consular officers are appointed.

All such acts of agreement and other instruments, and also copies and translations thereof, when duly authenticated by such Consul-general, Consul, Vice-Consul, or Consular-Agent under his official seal, shall be received by public officials and in courts of justice as legal documents, or as authenticated copies, as the case may be, and shall have the same force and effect as if drawn up or authenticated by competent public officers of one or the other of the two countries.

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<sup>5</sup> See protocol, p. 128.

ART: X<sup>5</sup>

In case of the death of any citizen of Germany in the United States or of any citizen of the United States in the German Empire without having in the country of his decease any known heirs or testamentary executors by him appointed, the competent local authorities shall at once inform the nearest consular officer of the nation to which the deceased belongs of the circumstance, in order that the necessary information may be immediately forwarded to parties interested.

The said consular officer shall have the right to appear personally or by delegate in all proceedings on behalf of the absent heirs or creditors until they are duly represented.

In all successions to inheritances citizens of each of the Contracting Parties shall pay in the country of the other such duties only as they would be liable to pay, if they were citizens of the country in which the property is situated or the judicial administration of the same may be exercised.

## ART: XI

Consuls general, Consuls, Vice-Consuls, and Consular-Agents of the two countries are exclusively charged with the inventorying and the safe-keeping of goods and effects of every kind left by sailors or passengers on ships of their nation who die either on board ship or on land, during the voyage or in the port of destination.

## ART: XII

Consuls general, Consuls, Vice-Consuls, and Consular-Agents shall be at liberty to go either in person or by proxy on board vessels of their nation admitted to entry and to examine the officers and crews, to examine the ships papers, to receive declarations concerning their voyage, their destination, and the incidents of the voyage, also to draw up manifests and lists of freight, to facilitate the entry and clearance of their vessels, and finally to accompany the said officers or crews before the judicial or administrative authorities of the country, to assist them as their interpreters or agents.

The judicial authorities and custom house officials shall in no case proceed to the examination or search of merchant vessels without having given previous notice to the consular officers of the nation to which the said vessels belong, in order to enable the said consular officers to be present.

They shall also give due notice to the said consular officers in order to enable them to be present at any depositions or statements to be made in courts of law or before local magistrates, by officers or persons belonging to the crew, thus to prevent errors or false interpretations which might impede the correct administration of justice. The notice to Consuls, Vice-Consuls, or Consular-Agents shall name the hour fixed for such proceedings. Upon the non-appearance of the said officers or their representatives, the case may be proceeded with in their absence.

ART: XIII <sup>6</sup>

Consuls general, Consuls, Vice-Consuls, or Consular-Agents, shall have exclusive charge of the internal order of the merchant vessels of their nation, and shall have the exclusive power to take cognizance of and to determine differences of every kind which may arise, either at sea, or in port, between the captains, officers and crews, and specially in reference to wages and the execution of mutual contracts. Neither any court or authority, shall, on any pretext, interfere in these differences except in cases where the differences on board ship are of a nature to disturb the peace and public order in port, or on shore, or when persons other than the officers and crew of the vessel are parties to the disturbance.

Except as aforesaid, the local authorities shall confine themselves to the rendering of efficient aid to the consuls, when they may ask it in order to arrest and hold all persons, whose names are borne on the ship's articles, and whom they may deem it necessary to detain. Those persons shall be arrested at the sole request of the consuls, addressed in writing to the local authorities and supported by an official extract from the register of the ship or the list of the crew, and shall be held, during the whole time of their stay in the port, at the disposal of the consuls. Their release shall be granted only at the request of the consuls, made in writing.

The expenses of the arrest and detention of those persons shall be paid by the consuls.

ART: XIV <sup>6</sup>

Consuls general, Consuls, Vice-Consuls, or Consular-Agents may arrest the officers, sailors, and all other persons making part of the crews of ships-of-war or merchant vessels of their nation, who may be guilty or be accused of having deserted said ships and vessels, for the purpose of sending them on board, or back to their country.

To that end, the Consuls of Germany in the United States shall apply to either the federal, State, or municipal courts or authorities; and the Consuls of the United States in Germany shall apply to any of the competent authorities and make a request in writing for the deserters, supporting it by an official extract of the register of the vessel and the list of the crew, or by other official documents, to show that the men whom they claim belong to said crew. Upon such request alone thus supported, and without the exaction of any oath from the Consuls the deserters (not being citizens of the country where the demand is made either at the time of their shipping or of their arrival in the port), shall be given up to the Consuls. All aid and protection shall be furnished them for the pursuit, seizure, and arrest of the deserters, who shall be taken to the prisons of the country and there detained at the request and at the expense of the Consuls, until the said Consuls may find an opportunity of sending them away.

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<sup>6</sup> Terminated July 1, 1916 (38 Stat. 1164).

If, however, such opportunity should not present itself within the space of three months, counting from the day of the arrest, the deserters shall be set at liberty, and shall not again be arrested for the same cause.

#### ART: XV

In the absence of an agreement to the contrary between the owners, freighters, and insurers, all damages suffered at sea by the vessels of the two countries, whether they enter port voluntarily or are forced by stress of weather, shall be settled by the Consuls general, Consuls, Vice-Consuls, and Consular-Agents of the respective countries. If, however, any inhabitant of the country, or citizen or subject of a third power, shall be interested in the matter, and the parties cannot agree, the competent local authorities shall decide.

#### ART: XVI

In the event of a vessel belonging to the government, or owned by a citizen of one of the two Contracting Parties being wrecked, or cast on shore, on the coast of the other, the local authorities shall inform the Consul general, Consul, Vice-Consul, or Consular-Agent of the district of the occurrence or, if there be no such consular Agency, they shall inform the Consul general, Consul, Vice-Consul, or Consular-Agent of the nearest district.

All proceedings relative to the salvage of American vessels wrecked or cast on shore in the territorial waters of the German Empire shall take place in accordance with the laws of Germany; and reciprocally, all measures of salvage relative to German vessels wrecked or cast on shore in the territorial waters of the United States shall take place in accordance with the laws of the United States.

The consular authorities have in both countries to intervene only to superintend the proceedings having reference to the repair and revictualling, or if necessary, to the sale of the vessel wrecked, or cast on shore.

For the intervention of the local authorities no charges shall be made except such as in similar cases are paid by vessels of the nation.

In case of a doubt concerning the nationality of a shipwrecked vessel, the local authorities shall have exclusively the direction of the proceedings provided for in this article.

All merchandise and goods, not destined for consumption in the country where the wreck takes place, shall be free of all duties.

#### ART: XVII

With regard to the marks or labels of goods, or of their packages, and also with regard to patterns and marks of manufacture and trade, the citizens of Germany shall enjoy in the United States of America, and American citizens shall enjoy in Germany the same protection as native citizens.

## ART: XVIII

The present convention shall remain in force for the space of ten years counting from the day of the exchange of the ratification which shall be exchanged at Berlin within the period of six months.

In case neither party gives notice, twelve months before the expiration of the said period of ten years, of its intention not to renew this convention, it shall remain in force one year longer, and so on from year to year, until the expiration of a year from the day on which one of the parties shall have given such notice.

In faith whereof the Plenipotentiaries have signed and sealed this Convention.

Berlin the 11. of December 1871.

GEO. BANCROFT [SEAL]

B. KOENIG [SEAL]

## PROTOCOL

The Undersigned met this day in order to effect the exchange of the ratifications of the Consular Convention signed on the 11th day of December 1871 between the United States of America and Germany.

Before proceeding to this Act, the Undersigned Envoy extraordinary and Minister plenipotentiary of the United States of America, declared:

1. that, in accordance with the instruction given him by his government, with the advice and consent of the Senate, the expression "Property" used in the English text of articles III and IX is to be construed as meaning and intending "Real estate;"

2. that, according to the laws and the Constitution of the United States, Article X applies not only to persons of the male sex but also to persons of the female sex.

After the Undersigned, President of the office of the Chancellor of the Empire had expressed his concurrence with this declaration, the Acts of ratification, found to be in good and due form, were exchanged, and the present protocol was in duplicate executed.

Berlin the 29. April 1872.

GEO. BANCROFT  
DELBRUECK